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Maria R. Boes

Jews in the Criminal-Justice System of Early

Modern Germany The mistreatment of minorities under the guise of legality is not a twentieth-century phenomenon; nor is it confined to any particular group of people or country. In America, reports of race-influenced police brutalities, tampering with evidence, and race-biased misconduct in federal courts have been gaining increased attention. Few corresponding research projects, however, exist for other areas, especially not for early modern Germany. The methodological approach of this article addresses this lack of relevant historical scholarship about the judicial treatment of German Jews during this period.¹

A case study of a medium-size German town, Frankfurt am Main, from 1562 to 1696, serves as the basis for this historical probe. The study focuses on various legal practices, such as criminal legislation and arrest and trial procedures. Special attention is given to the operating principles of trial procedures to test the proposition advanced by some historians—Glanz, in particular—that Jews were accorded fair trials in early modern Europe. In addition, this article provides an in-depth assessment of the sen-

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1 Randall Kennedy, *Race, Crime and the Law* (New York, 1997); Roger Parloff, "Radically Neutral," *New York Times Book Review*, 15 June 1997; Benjamin Weiser, "Study Finds Discrimination Occurs in Federal Courts," *New York Times*, 11 June 1997.

tencing of Jews and penal procedures, as well as comparative analyses with other social and religious groups.²

Frankfurt lent itself to such a methodological approach for several reasons. Most important is the relevant data in Frankfurt's municipal archives. For example, the *Strafenbuch* (the book of punishments), which dictated the time frame of this study, lists every criminal sentenced between 1562 to 1696, together with his or her crime and punishment. Frankfurt's *Ratsprotokolle* (the minutes of the city council), *Bürgermeisterbücher* (the minutes of the mayors' meetings), as well as other contemporary legal sources, such as the *Concepta Edictorum Francofurtensium*, were also consulted to assess Frankfurt's legal practices.³

Frankfurt's status as a free imperial city with well-established political, economic, religious, and judicial autonomy, provided excellent parameters for this case study. The city's medium size—approximately 19,000 inhabitants at its height in the seventeenth century—made the scope of this partly quantitative analysis manageable. Last but not least, Frankfurt's religious heterogeneity added a particularly valuable dimension to the comparative aspect of the analysis.

HISTORICAL SETTING As a free imperial city, Frankfurt am Main was self-administered. A municipal governing body, the city council, formed its main administrative center. The city council was separated into three benches. The first two benches consisted of patricians; the other was composed of representatives from

2 Rudolf Glanz, *Geschichte des niederen jüdischen Volkes in Deutschland. Eine Studie über historisches Gannertum, Bettelwesen und Vagantentum* (New York, 1968), 28–30; Otto Ulbricht, "Criminality and Punishment of the Jews in the Early Modern Period," in R. Po-Chia Hsia and Hartmut Lehman (eds), *In and Out of the Ghetto: Jewish-Gentile Relations in Late Medieval and Early Modern Germany* (Cambridge, 1995), 69.

3 The local *Ratschreiber*, the municipal clerk of the city council, registered the pertinent criminal information. The *Strafenbuch*, located in Frankfurt's municipal archives, is hereinafter abbreviated as ST. The *Ratsprotokolle*, hereinafter abbreviated as RP, exist for the time period of 1562 to 1689, except for the years 1626 and 1628. The *Bürgermeisterbücher*, hereinafter abbreviated as BB, cover the entire period from 1562 to 1696, except for the years 1626 and 1628. Both sources register all daily transactions conducted by Frankfurt's city council in its capacity as the governmental, administrative, and judicial center of Frankfurt am Main. All judicial deliberations and procedures are contained in these two sets of municipal sources located in Frankfurt's municipal archives. The six volumes of the handwritten *Concepta Edictorum Francofurtensium* are housed in Frankfurt's municipal archives. *Corpus Legum Francofurtensium* (Frankfurt am Mayn, 1748) 5v.; Johann C. Beyerbach (ed.), *Sammlung der Verordnungen der Reichsstad Frankfurt am Mayn* (Frankfurt am Mayn, 1798), 6v.

thirteen of the most distinguished local guilds. All of the councilors at the time were Lutheran men.

In judicial affairs, Frankfurt differentiated between civil and criminal suits. In civil matters, only members of the first two benches were convened; representatives of all three benches were summoned in criminal cases. In the adjudication of criminal cases, Frankfurt's city councilors possessed extensive powers. Not only were their verdicts final, since there was no court of appeal for criminal matters in the Holy Roman Empire, but their scope included local citizens as well as outsiders, regardless of the location of their crimes and regardless of their social, religious, or military status.

Frankfurt's criminal jurisdiction also extended over local and foreign Jews. The city acquired the judicial rights over the Jews in 1349, when Emperor Charles IV pawned his imperial privileges to Frankfurt. This transfer of imperial to municipal jurisdiction, however, did not prove advantageous for local Jews. Shortly thereafter, they were attacked by the Christian populace. Many Jews were killed; the remaining survivors fled.⁴

Approximately twenty years later, a few Jewish families seem to have resettled in Frankfurt. But their legal status was altered. Jews could no longer obtain the status of permanent citizens. Instead, they were issued citizen permits lasting from one to five years. Jews were also prohibited from promulgating laws among themselves; they were barred from convening their own courts, save for marriage and inheritance matters and minor civic affairs, which were handled by the Jewish *Baumeister*, a Jewish lay official. Frankfurt ensured compliance with these new regulations by mandating that each Jew, at the age of fourteen, swear to seek justice only from the city council.⁵

4 Karl Bücher, *Die Bevölkerung von Frankfurt am Main im 14. und 15. Jahrhundert* (Tübingen, 1910), 534; Friedrich Bothe, *Geschichte der Stadt Frankfurt am Main* (Frankfurt am Main, 1913), 94.

5 Joseph Goldschmidt, "Die Rückkehr der Juden nach Frankfurt am Main im Jahre 1360," in Ludwig Geiger (ed.), *Zeitschrift für die Geschichte der Juden in Deutschland* (Liechtenstein, 1975; repr.), II; Bücher, *Bevölkerung*, 527; Johann Anton Moritz, *Versuch einer Einleitung in die Stadtverfassung der Reichsstadt Frankfurt am Main* (Frankfurt am Main, 1785, 1786), 2v., 253–254; Isidor Kracauer, *Geschichte der Juden in Frankfurt am Main, 1550–1824* (Frankfurt am Main, 1925), 2v., cites 1560 as the date for Frankfurt's city council decision to have minor legal affairs handled by the Jewish "Baumeister." Bothe, *Stadt Frankfurt*, 232.

Civic restrictions were compounded by fiscal demands. In 1403, Frankfurt introduced an annual Jewish city tax that set the stage for the so-called *Judenstätigkeiten*, Jewish municipal charters. On average, these charters lasted for three years, but with each renewal, the obligations became more demanding.⁶

Despite the introduction of such civic and financial curtailments, Frankfurt did not impose any residential or ownership restrictions on its Jewish population for years. Jews could reside anywhere in the city, and they had the right to acquire real estate. However, a combination of religious and imperial fiat finally eroded this residential co-existence. As early as the Fourth Lateran Council of 1215, the Catholic church had tried to introduce special dress codes for Jews. During the Synod of Basel in 1434, the Church insisted more vigorously on this mandate, and admonished secular rulers to establish separate living quarters for Jews. The Church also introduced legislation forbidding Jews from hiring Christian servants and prohibiting Christians from consulting Jewish doctors or eating or frequenting public bathhouses with Jews. Frankfurt seems to have ignored these exhortations, continuing with such practices as hiring Jews as municipal doctors. It also disregarded the emperor's reinforcement of similar Church recommendations in 1442, as well as additional admonitions from regional Church dignitaries. A second imperial mandate was stalled temporarily in 1458. But in 1460, Frankfurt's City Council succumbed to ecclesiastical and imperial pressures, asking its Jewish population to relocate to special quarters.⁷

The same year, Frankfurt began constructing the *Judengasse*, the Jewish street. When it was finished two years later, Frankfurt's Jewish population—together with its synagogue, which, as located opposite the main local church, visually symbolized the co-existence of Frankfurt's Jews and Christians—was removed to the *Judengasse*. The Jewish street was encircled by walls and could be accessed only at three gates, which were locked at night and

6 Bothe, *Stadt Frankfurt*, 186; Georg Ludwig Kriegk, *Frankfurter Bürgerzwiste und Zustände im Mittelalter* (Frankfurt am Main, 1862), 432.

7 Bücher, *Bevölkerung*, 528; Kriegk, *Bürgerzwiste*, 452. J. Friedrich Battenberg, "Des Kaisers Kammerknechte," *Historische Zeitschrift*, CCXLV (1987), 559, confirms this sequence of events by stating that the "Judenknechtschaft," bondage of the Jews, originated in theological interpretations and consequently shifted to the political realm. Guido Kisch, *The Jews in Medieval Germany: A Study of Their Legal and Social Status* (New York 1970; 2d ed.), 295; Kracauer, *Geschichte der Juden*, I, 178, 196–198, 199.

guarded by watchmen. Greatly resenting their physical segregation, Frankfurt's Jews called their new quarters "das Neue Egypten," the New Egypt (see Figure 1).⁸

This isolation was further compounded by visual ostracism. By the late fifteenth century, Frankfurt's Jews were forced to wear yellow rings on their clothes so that "Christians [would] be clearly identifiable from Jews." True, the decision of Frankfurt's city council to make Jews wear special patches coincided with the general introduction of local dress codes and other visible signs of identification. But visible signs work two ways, they elevate and denigrate people socially. In the case of Jews, such insignia degraded their status and further alienated them from the community.⁹

Professional and economic curtailments accentuated this litany of restrictions. Jews were pushed out of long-distance trading and generally excluded from the Christian guild system. The 1614 guild ordinance of the *passementeries* (ornamental braid producers) clearly states that no master was to work for Jews nor teach them the trade. Jews were left with few occupational and professional options; they were largely relegated to lending money and running pawn shops. In financial disasters, they could rely only on fellow Jews. Frankfurt excluded its Jewish population from receiving any municipal poor relief, despite the fact that Jews were taxed more heavily than any other social or religious group in town.¹⁰

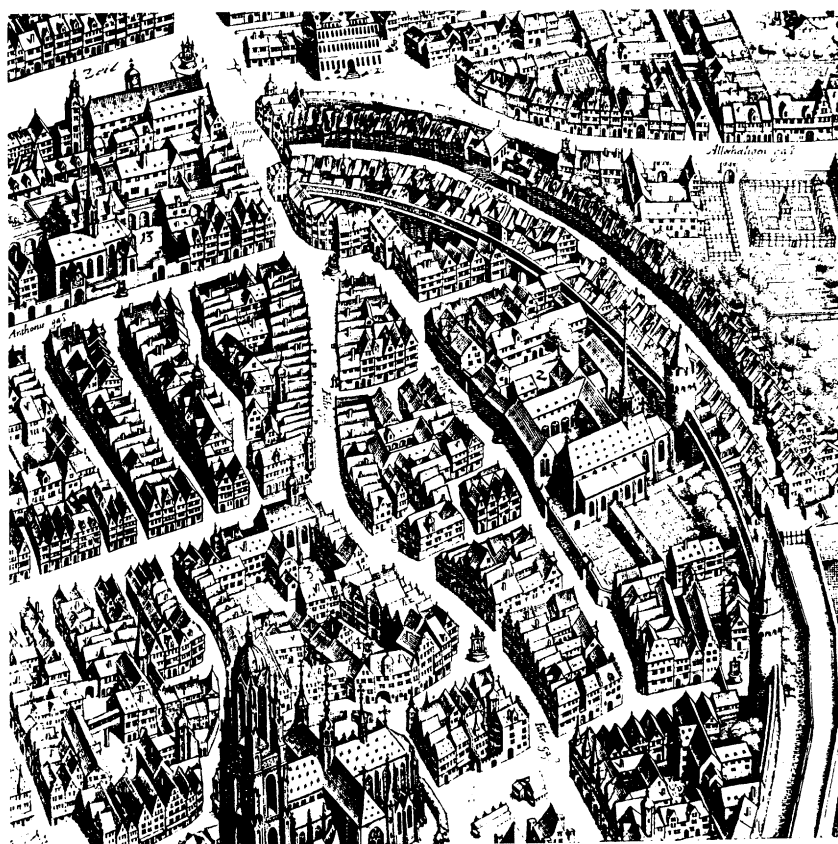
Martin Luther, after a visit to Frankfurt, described the plight of the local Jewish population most cogently: "They [Frankfurt's Jews] are compelled to wear yellow rings on their coats, thereby to be known; they have no houses of their own, only furniture; and, indeed, they can only lend money upon houses or grounds at great hazard." The reformer's seemingly sympathetic observations toward Jews, however, were short-lived. His initial sympathy soon turned into a polemical attack on them, once he realized that they did not heed his proselytizing efforts. Luther's outspoken opposition is well represented in "On the Shem Hamphoras,"

8 Kracauer, *Geschichte der Juden*, I, 205.

9 Beyerbach (ed.), *Sammlung*, VI, 1261; Boes, "Public Appearance and Criminal Judicial Practices in Early Modern Germany," *Social Science History*, XX (1996), 259-279.

10 Battenberg, "Des Kaisers Kammerknechte," 560, 561, 593; Bothe, *Beiträge zur Wirtschafts- und Sozialgeschichte der Reichsstadt Frankfurt am Main* (Altenburg, 1906), 89; Kracauer, *Geschichte der Juden*, I, 452; Moritz, *Versuch*, II, 263.

Fig. 1 The Jewish Street in Frankfurt, c. 1770



SOURCE Map by Matthäus Merian, Frankfurt's municipal archives.

published in 1543. It contains “the most vituperative denunciation ever of Jewish perfidy,” advocating the burning of Jewish synagogues and private homes. It led to the outbreak of anti-Jewish violence in many Lutheran areas. Hence, the Reformation did not ease the plight of the Jews. Lutherans proved to be as relentless as Catholics in their antisemitism. Frankfurt, most of whose inhabitants had converted to Lutheranism, was no exception. The city’s 1577 *Judenstätigkeit*, issued by a Lutheran city council, intensified the restrictions on Frankfurt’s Jewish populace.¹¹

11 William Hazlitt (trans. and ed.), *Table Talk of Martin Luther* (London, 1857), 347; Bernd C. Sucher, *Luthers Stellung zu den Juden* (Nieuwkoop, 1977), 85; Klaus Depperman, “Judenhass

Restrictive measures from above were reinforced by mistreatments from below. The population at large exhibited the same attitudes as their religious and civic leaders. By the late fifteenth century, when Frankfurt was still a Catholic town, many local Jews complained about verbal and physical abuse in the streets. One hundred years later, the sentiments of the local people had not changed. One municipal edict in 1591 even admonished journeymen to curb their premeditated attacks on Jews.¹²

Frankfurt at least allowed Jews to stay in town. Many cities and regions in the Holy Roman Empire—Cologne in 1426, Nuremberg and Ulm in 1499, and Bavaria in 1442—had expelled Jews permanently. In fact, the expulsion of Jews was a popular European phenomenon. The exodus of Jews from the Spanish peninsula is its most famous example. Jews were also officially expelled from various cities in Italy, and they were considered *personae non gratae* in France and England. The Renaissance did not represent a “rebirth” for European Jews.¹³

In contrast to these widespread exclusionary policies, Frankfurt’s more flexible residential attitudes seemed to encourage Jews to settle locally. The city’s economic boom, evident by the mid-sixteenth century, acted as a further stimulus for Jewish settlement.

und Judenfreundschaft im frühen Protestantismus,” in Bernd Martin and Ernst Schulin (eds.), *Die Juden als Minderheit in der Geschichte* (Munich, 1981), 110–131; Walter Bienert (ed.), *Martin Luther und die Juden. Ein Quellenbuch mit zeitgenössischen Illustrationen* (Frankfurt am Main, 1982), 149; Jonathan I. Israel, *European Jewry in the Age of Mercantilism, 1550–1750* (Oxford, 1985), 10; Marvin Lowenthal, *The Jews of Germany* (New York, 1936), 162; Robert Seltzer, *Jewish People, Jewish Thought: The Jewish Experience in History* (New York, 1980), 501; Po-Chia Hsia, “Printing, Censorship, and Antisemitism in Reformation Germany,” in Philipp N. Bebb and Sherin Marshal (eds.), *The Process of Change in Early Modern Europe: Essays in Honor of Miriam Usher Chrisman* (Athens, 1988), 135–148; Heiko A. Oberman (trans. James I. Porter), *The Roots of Antisemitism in the Age of Renaissance and Reformation* (Philadelphia, 1984); Steven Rowan, “Luther, Bucer and Eck on the Jews,” *Sixteenth Century Journal*, XVI (1985), 79–90; Battenberg, “Des Kaisers Kammerknechte,” 579; Bücher, *Bevölkerung*, 587.

12 *Concepta Edictorum*, III, 91.

13 Dutch towns seemed to have a similar “liberal admission policy” for Jews. See Florike Egmond, “Crime in Context: Jewish Involvement in Organized Crime in the Dutch Republic,” *Jewish History*, IV (1988), 85. Battenberg, “Des Kaisers Kammerknechte,” 575; Christopher R. Friedrichs, “Jews in the Imperial Cities: A Political Perspective,” in Po-chia Hsia and Lehman (eds.), *In and Out of the Ghetto*, 275–288; Israel, *European Jewry*, 6–10; Johan Edwards (trans. and ed.), *The Jews in Western Europe, 1400–1600* (Manchester, 1994); Raymond B. Waddington and Arthur H. Williamson (eds.), *The Expulsion of Jews, 1492 and After* (New York, 1994); Markus Wenninger, *Man bedarf keiner Juden mehr. Ursachen und Hintergründe ihrer Vertreibung aus den deutschen Reichsstädten im 15. Jahrhundert* (Vienna, 1981); Alfred Haverkamp, “Die Judenverfolgungen zur Zeit des schwarzen Todes im Gesellschaftsgefüge deutscher Städte,” in *idem* (ed.), *Zur Geschichte der Juden im Deutschland des späten Mittelalters und der frühen*

In 1542, Jews accounted for approximately 419 of Frankfurt's residents; by 1612, their numbers had climbed to 3,000, representing 15 percent of the total population.¹⁴

Jews were not the only religious group flocking to Frankfurt. Calvinists, mainly religious refugees from the Netherlands, also arrived in large numbers. In 1595 they numbered 4,000. Jews and Calvinists, and the residual group of local Catholics, shared some of the local religious discriminatory features: All were excluded from holding municipal offices, and barred from the guilds. Unlike the Jews, however, the Christian minorities did not have to wear special insignia or live in separate quarters. Most significant, neither group was ever brutally attacked by the populace or physically forced out of town.

Frankfurt's Jews, however, did suffer this fate during a serious local upheaval, the Fettmilch uprising, which was caused by a complex mixture of political, financial, social, and religious discontent, fueled by allegations of city-council corruption. Although the city council was the prime target of the people, local Jews were also on the hit list, partly because many of the revolt's ringleaders, especially guild members, were personally indebted to Jewish money lenders. In order to escape their financial obligations, many insurrectionists insisted on the expulsion of the Jews. Initially, the city council, primarily the patrician members, refused this demand. But when the revolt spiraled out of control, insurrectionists attacked the Judengasse, and, after the assault abated, expelled Jews from Frankfurt.¹⁵

Neuzeit (Stuttgart, 1981); Herman Greive, *Die Juden. Grundzüge ihrer Geschichte im mittelalterlichen und neuzeitlichen Europa* (Darmstadt, 1982; 2d ed.). Even Erasmus, one of the leading humanists of his day, expressed a negative view of Jews: Rainer Walz, "Lage und Selbstverständnis der deutschen Juden im sechzehnten Jahrhundert," in Dirk Blasius and Dan Diner (eds.), *Zerbrochene Geschichte. Leben und Selbstverständnis der Juden in Deutschland* (Frankfurt am Main, 1991), 36. See also Kisch, *Erasmus' Stellung zu den Juden und Judentum* (Tübingen, 1969). For a suggestion that the Renaissance had a positive effect on Jews, see Robert Bonfil (trans. Anthony Oldcorn), *Jewish Life in Renaissance Italy* (Los Angeles, 1994). For a comparative argument on women, see Joan Kelly-Gadol, "Did Women Have a Renaissance?" in Renate Bridenthal, Claudia Koonz, and Susan Stuard (eds.), *Becoming Visible, Women in European History* (Boston, 1987; 2d ed.), 175–201.

14 Kracauer, *Geschichte der Juden*, I, 31.

15 See Friedrichs' analysis of various historiographical interpretations of the Fettmilch uprising in "Politics or Pogrom? The Fettmilch Uprising in German and Jewish History," *Central European History*, XIX (1986), 186–228.

Imperial intervention eventually restored local calm, reinstated the city council, and escorted Frankfurt's ousted Jews back to town. An ensuing imperial criminal investigation revealed that the attack on the Jewish ghetto had been carried out predominantly by journeymen and workers. As a result, Frankfurt's apprentices and journeymen had to swear to refrain from attacking Jews both in and outside the Judengasse. Upon their return, Frankfurt's Jews were granted a new charter, but this new *Judenstättigkeit* did not abolish any social or financial restrictions. Only the three-year renewal clause was dropped; Jews were now permanent residents of Frankfurt, though they had to stay in the ghetto. In fact, Frankfurt's Jews remained there until the early nineteenth century.¹⁶

LEGISLATIVE AND PROCEDURAL PRACTICES Frankfurt's status as a free imperial city permitted it to promulgate its own criminal laws, despite the existence of an official criminal code for the Holy Roman Empire, the *Constitutio Criminalis Carolina*. The Code's *Salvatorische Klausel* (saving clause), accommodated local variations.

Although Frankfurt's criminal legislation applied to all local residents, including Jews, it was not free from insidious loopholes. Wealthy offenders or culprits of high social standing could pay fines for certain infractions, such as sexual offenses, instead of being subjected to physical or shaming punishments. Conversely, punishment of those with little money or of low social status was more severe. These loopholes in the laws left the door wide open for general misuse, particularly against Jews, who were considered of low social status.¹⁷

Opportunities for legal abuse were supported by a law of 1386 that specifically separated Jews from Christians by prohibiting sexual intercourse between the two. Although this legislation could be interpreted as mutually discriminating, one-sided law enforcement made it distinctly disadvantageous to Jews. Hardly any Christians were sentenced for such transgressions, compared with Jews. Moreover, even though various municipal policing ordinances offered monetary incentives for the population to turn in culprits, only Jews who had sexual intercourse with Christians

16 Bothe, *Beiträge*, 98; Kracauer, *Geschichte des Juden*, I, 397.

17 Bayerbach (ed.), *Sammlung*, I, 161.

were singled out as criminals. This explicitly Jewish-oriented criminal policy was concomitant with implicitly discriminatory arrest practices. By the sixteenth century, Frankfurt, like most of Europe, had adopted inquisitorial court procedures, whereby private criminal practices were replaced with official ones. This shift, however, did not affect policing methods. Policing was not carried out by an official police force; it continued to be exercised by the population at large. Hence, the city council, though the final arbiter in criminal cases, was dependent on the input of the population for arrests, as data derived from Frankfurt's criminal records clearly demonstrate. Frequently, local inhabitants caught culprits *in flagrante delicto*, such as on October 16, 1571, when Jacob, a Jew from Vienna, was caught stealing during "broad daylight."¹⁸

Besides direct involvement, the population at large could also instigate arrest by circulating rumors or hearsay. Rumors of criminal wrongdoing were enough to arrest a person for trial procedures. Personal antipathies could easily be vented by unjust accusations, and class prejudices could be animated by starting slanderous campaigns. Such indirect criminal indictments were extremely powerful judicial weapons; it was almost impossible to trace the origin of rumors to a single person. The anonymity of rumor mongers precluded countercharges.¹⁹

Sentencing in the form of the *Verdachtsstrafe*, a punishment for being suspicious, further encouraged nebulous notions of incrimination. Most criminal justice systems of the time, including Frankfurt's, allowed for sentencing based on mere suspicion, that is, without substantive proof either in the form of eyewitnesses or a guilty plea from the suspect. Lack of proof did not automatically lead to acquittal; so long as Frankfurt's city council harbored doubts about a suspect's innocence, a *Verdachtsstrafe* could be meted out. *Verdachtsstrafen* took place even when torture could not make a suspect confess. This double feature of tainted arresting and sentencing practices added stimulus to selective crime reporting. Given the general social outlook on Jews, it is not surprising that they became prime legal victims of the *Verdachtsstrafe*.²⁰

18 Bothe, *Stadt Frankfurt*, 152; ST, October, 16, 1571.

19 Boes, "Public Appearance," 262.

20 Helmut Coing, *Epochen der Rechtsgeschichte in Deutschland* (Munich, 1967), 79; Brigitte Thöle, *Die Verdachtsstrafe in der kriminalwissenschaftlichen Literatur des 18. und 19. Jahrhunderts*

Despite these inherent legal pitfalls, Jews were not without legal recourse. They could, and did, initiate successful criminal accusations against both Christians and fellow Jews. Even Jewish women, similar to their Christian counterparts, could file municipal criminal accusations. The city council took such complaints seriously. Jews, like Christians, could also intercede personally on behalf of an arrested suspect. In some cases, Jews even declined to plea for fellow Jews, such as in a 1578 case when “kein Jud sich seiner annehmen wollte” (no Jew wanted to help the accused).²¹

Jewish women, similar to their Christian counterparts, were the ones who tried most often to redress the judicial balance by petitioning the city council for speedier trials and/or milder punishments. But Christian women had a higher success rate than Jewish women. The most prominent case occurred in 1571, when two Jews were arrested for theft. For a year, one of the detainee’s wives pleaded, almost on a daily basis, that the city council expedite matters and consider a milder punishment. Her pleas went unheeded. After eighteen months of confinement, her husband was sentenced to the ignominious capital punishment of death by drowning. The suspect’s extremely long detention—the longest in the 134-year span covered by this study—the horrendous prison conditions of the time, and his wife’s persistent pleas point to the disparaging judicial treatments of Jews. In many Christian criminal cases, extended detention periods alone led to milder punishments, such as in 1634, when a burgher convicted of manslaughter was released with a banishment sentence after a nineteen-week imprisonment.²²

Other exculpatory devices used to reduce the severity of punishments, such as the return of the stolen goods, also failed in the case of Jews. In a theft sentence from 1695, the Jewish offender was flogged, put into the pillory, and consequently banished “despite the return of the stolen goods.” What makes this case so special is not only the explicit denial of traditional penal modera-

(Frankfurt am Main, 1993), 3–5, 15; Julius R. Ruff, *Crime, Justice and Public Order in Old Regime France* (Dover, N.H., 1984), 58.

21 Boes “Women and the Penal System in Frankfurt am Main, 1562–1696,” *Criminal Justice History: An International Annual*, XIII (1992), 61–73; ST, May 17, 1673, Feb. 18, 1578; BB, Oct. 13, 1664, 38; RP, Aug. 29, 1598, 37.

22 Boes, “Women,” 68; RP, Oct. 9, 1571, 47; RP, Feb. 7, 1572, 82; ST, April 17, 1634.

tion but also the ensuing rationale for doing so, namely, “dieweil das Stehlen aber zu gemein werden wolle” (since stealing seems to become too widespread). This negative justification was offered only in one other incident, involving a gypsy woman.²³

Frankfurt’s records on the application of judicial torture also disclose strange notions of justice. In general, any suspect—regardless of age, gender, or religion—could undergo judicial torture to elicit a guilty plea. When comparing judicial torture trends of convicted Jews to those of Christian convicts, two diverging patterns emerge. First, during the 134-year span, a higher proportion of Jewish convicts were subjected to torture than Christian criminals. Second, although the application of torture declined dramatically by the beginning of the seventeenth century for Christian offenders, torture of Jews continued unabated until the 1660s (see Table 1).

One might argue that the discrepancy in the proportion of Jews to Christians tortured was due to the fact that more Christians than Jews confessed voluntarily before being convicted, in the hopes of receiving milder punishments. But this hypothesis has to be weighed carefully. Though Jews might have garnered more strength to resist torture because they received far harsher punishments than their Christian counterparts, there are no indications in Frankfurt’s records that Christians received milder punishments based on early confessions. A more plausible explanation for this legal aberration can be derived from an eighteenth-century legal document promulgated by the neighboring Austrian Empire, the *Constitutio Criminalis Theresiana*, which states that torture lasted several days for Jews and only several hours for Christians. Prejudicial (in the real sense of the word) attitudes thus seem to be at the root of judicial torture practices.²⁴

The same argument can be advanced for the unabated torture trend of Frankfurt’s Jews. Although, in general, the reasons for the decline of torture are complex and, at present, controversial, there is a strong time correlation between the decline of torture and concomitant changes in criminal punishments. Criminal punishments became milder within the same time frame that judicial torture declined. In Frankfurt, this parallel development is dem-

23 ST, Oct. 4, 1695, March 1, 1687.

24 *Constitutio Criminalis Theresiana* (Vienna, 1769), Art. 38, 12–13.

Table 1 Torture of Jews and Christians, Frankfurt am Main, 1562–1696

	1562–1594	1595–1627	1628–1660	1661–1696	TOTAL
Jews tortured	11	10	6	15	42
Jews convicted	13	12	9	60	94
Percentage	84.6%	83.3%	66.7%	25.0%	44.7%
Christians tortured	326	190	23	55	594
Christians convicted	449	403	112	280	1,244
Percentage	72.6%	47.1%	20.5%	19.6%	47.7%

SOURCES *Bürgermeisterbücher* and *Ratsprotokolle*.

onstrated by two studies, one on women and the other on juveniles. Starting in the early seventeenth century, both groups received milder punishments and fewer judicial tortures. However, this reduction of physical pain bypassed Jewish suspects. In Frankfurt, Jews were not only subjected to far harsher criminal punishments throughout the seventeenth century; the judicial torture of Jews persisted long after such treatment had fallen out of favor for others.²⁵

In addition to judicial torture, Frankfurt’s city council frequently consulted the local authorities at a suspect’s previous place of residence or law faculties of various universities to determine his/her guilt. These procedures applied to both Jews and Christians. A good case in point is the inquiry conducted for a 1694 Jewish recidivist. Frankfurt not only wrote to the city of Prague to gather more information on the suspect’s previous behavior, but it also sought legal advice about the difficult case from the law faculty of the University of Jena. The suspect was executed as a result of the information obtained.²⁶

Contacting former places of residence for data and law faculties for guidance bespeaks Frankfurt’s earnestness to arrive at just verdicts, but the objectivity of these outside sources should not be taken for granted. In the first place, Frankfurt contacted mainly faculties at Lutheran universities, and in the second, and more important, these law faculties based their findings on the suspect’s

25 John H. Langbein, *Torture and the Law of Proof* (Chicago, 1977); Pieter Spierenburg, *The Spectacle of Suffering* (Cambridge, 1984). For comparative analyses of juveniles and women, see Boes, “The Treatment of Juvenile Delinquents in Early Modern Germany: A Case Study,” *Continuity and Change*, XI (1996), 46; *idem*, “Women,” 64–65.

26 BB, Oct. 16, 1694, 87–88; ST, Oct. 19, 1694.

dossier as put together by Frankfurt's city council. Local biases would have easily been transferred to them.

Frankfurt's laws and arrest procedures give clear evidence of disparaging judicial treatment of Jews, and its criminal court proceedings display evidence of more subtle disparities, such as ignoring traditional exculpatory devices. The best example of disparity is the prolongation of the judicial-torture system for Jewish suspects. While seemingly operating within legal parameters, the judiciary was permeated with incongruities under the guise of legalism. Frankfurt's court procedures do not substantiate assertions advanced by various historians, notably Glanz, that Jews were accorded fair trials.²⁷

THE SENTENCING OF JEWS Meticulous recording methods make it easy to trace Jewish culprits and their crimes. Jewish suspects were always clearly identified as Jews, whereas Christian offenders were listed by religion only in conjunction with exceptional capital punishments. Even baptized Jews were listed separately, as "getaufter Jude"; baptism was not considered a social equalizer. On the contrary, as the century progressed, baptized Jews were held in higher contempt than Jews. In fact, the term "getaufter Jude" turned into invective.²⁸

This development was not an isolated phenomenon in Frankfurt or the Holy Roman Empire. The treatment of baptized Jews and their offspring in Spain is legendary. Excluded from church or public offices by what Kamen calls the "racialist movement" of the *Limpieza de Sangre* statute, baptized Jews remained social outcasts for centuries. According to Friedman, by the middle of the seventeenth century, "every descendent of Jewish converts

27 For judicial incongruities, see the seminal study, Douglas Hay, "Property, Authority and the Criminal Law," in *idem* et al. (eds.), *Albion's Fatal Tree. Crime and Society in Eighteenth-Century England* (New York, 1975), 42, which points out that "the nature of the criminal trial gave enormous discretion to men of property other than the prosecutor." Glanz, *Jüdischen Volkes*, 28–30. For similar findings of fair trials, see Herman Diederiks, "Strafrecht en stigmatisering. De Joden in de achttiende-eeuwse Republiek," in *idem* and C. Quispel (eds.), *Onderscheid en minderheid. Sociaal-historische opstellen over discriminatie en vooroordeel* (Hilversum, 1987), 77–98; Egmond, "Crime in Context, 76; *idem*, *Underworlds: Organized Crime in the Netherlands 1650–1800* (Cambridge, 1993), 110; J. C. G. M. Jansen, "Strafrechtspraak en joden in Limburg in de 18e en vroege 19e eeuw," in *Studies over de sociaal-economische geschiedenis van Limburg*, XXXI (1986), 78–101, points out judicial inequities in Holland.

28 ST, April 24, 1574, Feb. 14, 1663, Sept. 29, 1692; Oberman, *Roots of Antisemitism*, 38.

centuries before was now identified as a biological pollutant of Christian society.”²⁹

Racist though these policies and attitudes were, in Frankfurt’s case an additional dimension must be added—skepticism about the sincerity of Jews’ religious conversions. Frankfurt’s criminal records frequently allude to the dubiousness of their conversion, describing suspects who initially pretended to be Christian (“anfangs für einen Christen ausgeben”). One case referred to a baptized Jew who carried with him “Sachen so die Juden wenn sie beten anzulegen pflegen” (stuff Jews use to wear when they pray).³⁰

The real issue is not that Jews allegedly pretended to be Christians, but why they did. Contemporary penal practices furnish at least part of the answer. By pretending to be Christian, Jewish suspects tried to avert the severe penal repercussions that they normally had to suffer. In the long run, however, this deceptive approach proved to be counterproductive. Once Frankfurt’s city council realized the existence of such religious deceptions, it began describing every Jewish convert, even sincere ones, as “getaufter Jud,” thereby drawing attention to them as Jews.

From 1562 to 1696, 94 Jews and 103 burghers were sentenced for criminal wrongdoing. Although the total population of Jews in Frankfurt fluctuated over the years, the number never exceeded 3,000. Local burghers, on the other hand, had a considerably larger local presence. The 103 sentences for burghers come out of a far larger pool and, ipso facto, represent a small conviction trend. Conversely, the ninety-four sentences for Jews were a proportional over-representation.³¹

29 Henry Kamen, *The Spanish Inquisition* (London, 1976), 123–129. Henry Charles Lea, *A History of the Inquisition of Spain* (New York, 1906–1908), 4v.; William Monter, *Frontiers of Heresy: The Spanish Inquisition from the Basques Lands to Sicily* (Cambridge, 1990); Jerome Friedman, “New Christian Religious Alternatives,” in Waddington and Williamson (eds.), *Expulsion of the Jews*, 31.

30 ST, April 26, 1588, Dec. 28, 1658, Oct. 6, 1686, Oct. 12, 1686, Feb. 12, 1663.

31 Jewish crime victims were clearly identified as Jews; religious identities were never given for other victims. This stigmatization might partly explain the often mild punishments meted out to their assailants, such as in 1615 when a soldier who assisted in a robbery of a Jew was sentenced only to banishment. Karl-Ernst Meinhardt, *Das Peinliche Strafrecht der Freien Reichsstadt Frankfurt am Main im Spiegel der Strafpraxis des 16. und 17. Jahrhunderts* (Frankfurt am Main, 1957), also observed a flawed sentencing trend in favor of burghers. Boes, “Public Appearance,” demonstrates the importance of visible insignia to encourage biased crime reporting.

A periodic analysis of the conviction of Jews discloses momentous discrepancies. Most conspicuous is the dramatic increase during the last four decades of the seventeenth century. In contrast to only thirty-four male Jewish sentences during the ninety-nine-year period from 1562 to 1661, convictions rose to sixty during the ensuing thirty-six years (see Table 2). This is the most erratic quantitative jump of any of Frankfurt's criminal groups, and it defies any simple explanation, such as an increase in the Jewish population. In fact, the population trend for Jews is similar to that of Christians in that it reached its peak during the first three decades of the seventeenth century, dropped precipitously during the interwar years of 1631 to 1640, and reached 3,000 again by the end of the century.³²

The sentencing aberration manifests itself predominantly in two crime categories, property crime and the Verdachtsstrafe. Curiously, the rank of property crimes by Jews in relation to other crimes correlates almost directly to crime statistics involving Christians. Property-crime convictions ranked highest among all criminals, including women (see Table 3). Even the nature of these property crimes does not disclose any significant disparaging aspects. Thefts topped the list. In addition, Jews, like their Christian counterparts, stole from Jews and Christians alike and did not exempt stealing from houses of worship.³³

The time frame of property-crime statistics for Jews, however, departs from that for Christians. Convictions of property crimes by Jews increased from twenty-seven during 1562 to 1661 to forty-three during 1662 to 1696. During the first 99 years, Jews received 27 out of 629 sentences, or 0.4 percent; during the ensuing 35 years, sentences jumped to 43 out of 185, or 23 percent. Jews were convicted for almost one-quarter of all property crimes during the last four decades of the seventeenth century—a highly disproportionate conviction pattern. Changing criminality patterns among Jews might be one explanation for this drastic increase. The literature points to an increase of impoverished and vagrant Jews at the time—the so-called “Betteljuden,”

32 The 134-year period was broken down into four even periods in order to discern changes over time. Richard van Dülmen, “Das Frankfurter Ghetto. Zur Lebensweise und Kultur der Juden in der frühen Neuzeit,” in Reinhard Schneider (ed.), *Juden in Deutschland. Lebenswelten und Einzelschicksale* (Röhrig Universitätsverlag, 1994).

33 ST, May 5, 1677, March 7, 1683.

Table 2 Distribution of Male Criminals, Frankfurt am Main, 1562–1696

	1562–1594	1595–1627	1628–1660	1661–1696	TOTAL
Juveniles	36	18	4	11	69
Professional criminals	24	31	0	30	85
Jews	13	12	9	60	94
Burghers	22	43	8	30	103
Occupational groups	165	100	39	78	382
Unidentifiable	123	98	18	51	290
Total	383	302	78	260	1,023

SOURCE *Strafenbuch*

or begging Jews. Yet, the one correlation between poverty and property-crime sentences might not provide the best explanation. Factors other than poverty affect property-crime sentencing—biased crime reporting and/or biased court procedures, to name two.³⁴

Another possible explanation for the increase is the rise of gangs. But the evidence is limited to vague, and scarce, criminal archival entries citing Jewish accomplices or Jewish groups. In 1661, a culprit was described as having “verschiedene Juden in seiner Diebsgesellschaft” (various Jews in his thieving companionship). Fifteen years later a Jewish thief was sentenced with his six accomplices. The notion that Jews increasingly acted in concert or formed bands has to be assessed carefully. Frankfurt, like any other early modern city, was not a good hiding place. Marauding groups would not have thrived under the cramped conditions that characterized early modern cities. Gangs would have to await the appearance of large cities to provide the necessary urban camouflage.³⁵

Tobias maintains, for England, that at the beginning of the eighteenth century, only London was large enough “to have developed a full-scale criminal society.” Beier, McMullen, and Sharpe argue along similar lines, ascribing the existence of organized bands or an organized underworld in England to literary myth. For Amsterdam, no archival sources are available to dem-

34 Battenberg, “Des Kaisers Kammerknechte,” 557.

35 St., Nov. 19, 1664, June 9, 1676, Feb. 11, 1687, March 8, 1661, June 9, 1676; Friedrich Christian Benedikt Ave-Lallemant, *Das Deutsche Gaunertum in seiner sozialpolitischen, literarischen und linguistischen Ausbildung zu seinem heutigen Stande* (Leipzig, 1862), III, 44–46; IV, 254–262.; Uwe Danker, *Räuberbanden im alten Reich um 1700* (Frankfurt, 1988), 43–51; Glanz, *Jüdischen Volkes*, 86–87; Carsten Küther, *Räuber und Gauner in Deutschland* (Göttingen, 1987).

Table 3 Crime Sentences for Burghers and Jews, Frankfurt am Main, 1562-1696

NATURE OF OFFENSE	1562-1594		1595-1627		1628-1660		1661-1696		TOTAL	
	BURGHERS	JEWS	BURGHERS	JEWS	BURGHERS	JEWS	BURGHERS	JEWS	BURGHERS	JEWS
Property	14	12	25	7	3	8	16	43	58	70
Sexual	12	2	11	3	4	1	8	1	35	7
Crimes vs. persons	5	1	7	1	2	0	4	3	18	5
Religious	0	0	4	2	0	0	6	5	10	7
Public disturbance	1	2	5	2	0	1	1	14	7	19
Forgeries	3	2	0	2	0	0	4	2	7	6
Total	35	19	52	17	9	10	39	68	135	114
SOURCE	Strafenbuch.									

onstrate the existence of local gangs during the seventeenth century; not until the eighteenth was a “network of bands rounded up.” Egmond suggests that “Jewish bands became prominent only from the late 1720s onward.” The existence and proliferation of Jewish, and non-Jewish gangs, has to be relegated to the eighteenth century. Gangs cannot be considered a pivotal factor in the sudden increase of property-crime convictions for Jews during the last four decades of the seventeenth century.³⁶

A more likely cause for the increase of such convictions by the 1660s is the more vigorous legal pursuit of Jews. Nothing corroborates this contention better than the dramatic rise of the infamous *Verdachtsstrafe*, the punishment for being suspicious, which accompanied the precipitous increase in property-crime sentences. Thirteen of the eighteen *Verdachtsstrafen* involving Jews between 1562 and 1696 occurred during the 1661 to 1696 period. Of the thirty *Verdachtsstrafen* from 1661 to 1696, the Jewish share amounted to 43 percent. The implications are clear: Jews were now among the most likely, if not the most likely, criminal suspects in the eyes of Frankfurt’s population and the city council.

This sentencing trend reveals contradictory views of criminals. If one takes the conviction pattern for the most heinous of crime—murder, murder and robbery, and manslaughter—as the deductive base, burghers, soldiers, and journeymen should rank above Jews as possible suspects. No Jew was ever convicted for such crimes in Frankfurt during the 134-year span. Burghers received eight manslaughter and two murder convictions. Soldiers received twenty-two manslaughter, four murder, and four robbery and murder sentences. Yet, during the entire 134 years, they accounted for only eight *Verdachtsstrafen*. Soldiers, who had a far more serious criminal record than Jews, were perceived with less suspicion than Jews. Even more telling, soldiers received frequent admonitions to refrain from harassing and assaulting Jews, not vice versa.³⁷

36 John Jacob Tobias, *Crime and Police in England, 1700–1900* (Dublin, 1979), 8; Küther, *Räuber und Gauner*, 145–146, stresses the rural element in band formations for Germany. A. L. Beier, *Masterless Men: The Vagrancy Problem in England, 1560–1640* (London, 1986), 7; John L. McMullen, *The Canting Crew* (New Brunswick, 1984), 2, 8, 20, 23, 157; Jim A. Sharpe, *Crime in Seventeenth Century England* (Cambridge, 1983), 102, 118; Spierenburg, *Spectacle*, 138; Egmond, *Underworlds*, 180.

37 RP, July 5, 1683, 24.

The cases of journeymen exhibit similar disparities. Only eighteen journeymen were sentenced for criminal acts during the 1562 to 1696 period. Yet, judged by the numerous municipal decrees exhorting them to stop attacking Jews, they were by no means a peaceful lot. The sack of the Judengasse carried out predominantly by journeymen stands as flagrant testimony to their aggressive behavior. Two communal protective features are responsible for the low sentencing rate of journeymen, the guild masters who sat on the city council and selective crime reporting on the part of Frankfurt's population. Guild members accounted for one-third of Frankfurt's city council. This legal buffer is manifest in a 1673 case in which a culprit was given more lenient punishment precisely because he was a journeyman. In this connection, journeymen enacted the prejudices of the community—for example, the sack of the Judengasse. As agents of popular sentiment, their actions, clandestinely encouraged, were shielded from public prosecution by criminal underreporting.³⁸

This inverse perception of Jews as criminal despite the evidence points to significant cultural changes. Earlier public and brutal outbursts of local prejudices—clearly exhibited during the sack of the Jewish ghetto during the Fettmilch uprising—were replaced with more “refined” legal methods. To circumvent the kind of imperial intervention that the Fettmilch uprising drew, new channels of venting biases took root. Frankfurt's population, and its city council, eventually used the legal system for the advancement of their goals; legal prosecution replaced physical persecution. Unfortunately, this legal slandering of Jews has even affected historians, some of whom cite the existence of “typical Jewish crimes.” This tendency has persisted into the twentieth century. In Frankfurt, hardly any of the crimes labeled as “typically” Jewish, such as counterfeiting or fraud, were recorded in the *Strafenbuch*.³⁹

Little is made in the historical literature about the rare sentencing of Jews for violent crimes. Five assault convictions in 134 years is a remarkable number. Did Jews commit fewer violent crimes, or were their crimes not reported to the authorities? It is unlikely that their crimes would have gone unreported. Wide-

38 Bothe, *Beiträge*, 98; ST, May 6, 1673.

39 Ulbricht, “Criminality,” gives a concise rendition of the notion of “typical Jewish crimes,” 53 n. 28.

spread prejudices against Jews alone would suggest otherwise, all the more so since Jews were easily identified by their visible insignia. Jews simply committed fewer violent crimes. Why should this be so? Although crime records cannot say, an analytical approach focusing on the most, instead of the least, frequently sentenced violent criminals yields insights about the correlation between weapons, drugs, and violent crimes, which continue to be of concern.⁴⁰

Out of seventy manslaughter convictions in the *Strafenbuch* twenty-two (31.4 percent) went to soldiers. Given that soldiers carried arms, it is hardly surprising that they would have been implicated in violent crime, especially manslaughter, which was not premeditated. Moreover, in twenty-one, or 30 percent, of all manslaughter cases, the assaults either took place in bars, or the convicts were recorded as having been under the influence of alcohol when they committed the offense. The link between alcohol and aggressive behavior was well known to contemporaries. Statements about the consumption of alcohol frequently entered Frankfurt's legal litigations as an extenuating circumstance in manslaughter and other cases of violent assault. Jews, however, had no, or only limited, access to weapons and alcohol. As of the mid-thirteenth century, Jews were increasingly excluded from the *Waffenrecht*, the right to bear arms, which not only degraded their honor and legal status but also turned them into easy targets. Although the private consumption of alcohol by Jews cannot be assessed, Jews were not in a position to frequent local taverns, since they were locked into the Judengasse at sunset and all day on Sundays and holidays. Regardless of whether Jews in general tended to be less violent, the restrictions imposed upon them largely prevented them from committing violent crimes.

Circumstantial and environmental constraints also seem to have played a decisive role in the sentencing of Jews for sex crimes. Jews received seven such convictions during the 134 years, in contrast to burghers, for example, who received thirty-five (see

40 Recent reports about alcohol and violence are found in Christopher S. Wren, "Drugs or Alcohol Linked to 80% of Inmates [in America]," *New York Times*, 1 Jan., 1998; William J. Bennett, "Face the Facts About Alcohol and Crime," *New York Times*, op-ed, 19 July 1997. Kisch, *Forschungen zur Rechts- und Sozialgeschichte der Juden in Deutschland während des Mittelalters* (Sigmaringen, 1978), 33–40; Friedrich Hottenroth, *Altfrankfurter Trachten* (Frankfurt am Main, 1912), 362.

Table 3). The kind of sex offense for which Jews were sentenced is revealing. Six convictions were for illegal sex with Christians and the seventh for prostitution. The limited scope is significant, given the fourteen punishable sexual transgressions in Frankfurt, among them fornication, adultery, incest, bigamy, bestiality, rape, child molestation, and indecent exposure.

Sex crimes are often private and secretive, making them difficult to discover and report. Studies of sex crimes demonstrate that pregnancy and rumor constituted two of the most important sex-crime indicators. In the case of Frankfurt's Jews, however, such visible evidence of sex crime could easily elude large sections of the population, since Jews lived in the segregated *Judengasse*, which acted as a shield to outsiders. The physical and psychological alienation of Jews caused a cohesiveness in the Jewish community that would have discouraged the reporting of such offenses to the very officials who had created their plight. Most likely, Jews settled possible sexual disputes *en famille*, or within the community. This contention is borne out by the nature of the sex crimes for which Jews were actually sentenced.⁴¹

In addition to the ninety-four male convictions, Frankfurt also sentenced two female Jewish criminals. This negligible number fits Frankfurt's general female crime sentencing; considerably fewer women than men were convicted, namely, 315 to 1,023 (24 percent versus 76 percent). One of the female Jewish criminal cases is heart-rending: An unmarried maid was found with fatal stab wounds in her throat that she initially claimed to have received from a murderous attack by an unknown Jew. Shortly before she died, however, she admitted that she had inflicted the wounds herself out of shame and fear for having given birth to an illegitimate stillborn child that she had conceived with a local Jew.⁴²

The second female criminal was the wife of an alleged Jewish thief. Although he was the suspect, she was also arrested; no direct charges were leveled against her. This was not an unusual judicial procedure. Wives or companions of alleged criminals were not only arrested but even punished under the *Verdachtsstrafe* simply for having been in the company of criminals. In this particular

41 Boes, "Public Appearance," 268–269. See also Jan Sundin, "Sinful Sex: Legal Prosecution of Extramarital Sex in Preindustrial Sweden," *Social Science History*, XVI (1992), 99–128.

42 ST, June 6, 1695.

case, husband and wife indicated that they sought baptism. As a consequence, they were transferred to confinement quarters considered more suitable for religious instruction. The husband took advantage of this situation and fled. His wife gave birth to a baby boy who was promptly baptized. Upon hearing of her husband's flight, however, she revoked her earlier decision to become a Christian. Charged with heresy, she was banished from Frankfurt and her son placed in a local orphanage.⁴³

PENAL STRUCTURES Frankfurt's punitive forms, similar to most of Europe's, were basically threefold: capital punishment, corporal punishment, and banishment. However, variation within each of these three penal categories, in addition to combinations among them, diversified the possibilities. In all, Frankfurt could enact forty-seven different punishment combinations, ranging from banishment for specified intervals of time and distance to flogging and banishment; pillory and banishment; flogging, pillory, and banishment; the wheel with prior application of hot tongs; decapitation, with or without burial; etc.

Jewish convicts received fewer death sentences than Christians. Of the 94 Jewish convicts, only 11 (11.7 percent) were executed, compared with 326 out of 1,227 non-Jewish offenders (26.5 percent). The low number of Jewish death sentences is attributable to the absence of convictions for murder, robbery and murder, or manslaughter, which frequently, though not always, entailed the death penalty. Nor was any Jew sentenced for adultery, another crime that could entail the death sentence.

Nine of the eleven Jews sentenced to death were executed for property offenses. Three of them were recidivists; one was singled out in the records as having "made a profession out of stealing." The fourth had committed a combination of theft and assault; the fifth, various thefts and sex with Christians; and the sixth, previous thefts and a recent horse theft. Three other property-crime offenders were convicted for stealing objects of great value. The remaining two Jews sentenced to death were charged with counterfeiting and high treason during the Thirty Years' War. It is difficult to establish with certainty whether the application of the death sentence in all eleven cases falls within the

43 Boes, "Women," 67; ST, Nov. 17, 1686.

range of Frankfurt's contemporary capital-punishment criteria. On the surface, it seems so. Recidivism and the theft of valuable goods frequently led to the death penalty for Christians, as did counterfeiting and treason.⁴⁴

But despite these appearances of penal consistency, discrepancies between Christian and Jewish offenders are evident in the kinds of capital punishments that Jews suffered. Five of the eleven Jews sentenced to death were hung by their feet, and two were drowned. Hanging by the feet was hardly ever inflicted on Christians. Drowning, predominantly confined to women until 1618, was also rarely used for male Christians. The near exclusion of other religious groups from these particularly harsh punishments points to Judaism as one of the pivotal criteria for these penal incongruities. Various entries in the municipal criminal records state that any Jewish criminal who converted to Christianity would be punished "like a Christian"; those who did not would be hung by the feet or drowned.⁴⁵

In addition to such explicit statements, more subtle archival entries describe Lutheran religious fervor. Most of the time, these passages describe proselytizing efforts. Both Jews and Christians were subjected to religious propaganda, ostensibly a sign of the city council's concern not to execute anyone outside the saving religion, but there were considerable differences between the effort to convert non-Lutheran Christians and the effort to convert Jews, which were much more intense. More important, the failure of Jews to convert always resulted in harsher penalties. Non-Lutheran Christians who refused to convert never received punishments exceeding the norm. They were occasionally even granted religious services in their respective faiths before being executed.⁴⁶

Proselytizing procedures began several days prior to the enactment of the sentence. Considering the momentousness of such decisions, convicts were not accorded a long time to reflect, although occasionally executions were postponed to offer the

44 ST, March 8, 1661, Oct. 19, 1694, Oct. 18, 1695, Nov. 30, 1626, April 8, 1635.

45 Concerning hanging by the feet, see the terminology of the "Jewish Execution" coined in Glanz, "The 'Jewish Execution' in Medieval Germany," *Jewish Social Studies*, V (1943), 3–26, and its rebuttal by Kisch, "The Jewish Execution," in *idem* (ed.), *Forschungen zur Rechts-, Wirtschaft- und Sozialgeschichte der Juden* (Sigmaringen, 1979), 165–193. Boes, "Women," 65–66; BB, Feb. 2, 1660, 169; BB, Nov. 10, 1598, 190.

46 ST, Aug. 11, 1626.

convict better religious training. But even when delays were granted, they lasted only a few days. The rapid pace of the routine is reminiscent of St. Augustine's recommendation about the use of force to convert.⁴⁷

A test of religious steadfastness, often conducted before baptism, was to inform the future convert of his punishment in order to make sure that "the Jew is steadfast in his faith." Such religious tests concealed the fact that Jewish converts might be punished "like Christians." The records describe a 1598 incident wherein the city council did not tell a Jew sentenced to death of its intention to punish him "like a Christian" if he converted or to drown him if he refused. Yet, despite the city council's efforts to conceal possible mitigation upon conversion, some Jews must have been aware of such a possibility. In 1588, a Jewish suspect suggested to the council that if his life were spared, he would consent to baptism. The death penalty thus seemed to become something of a bargaining chip for religious conversions, and vice versa.⁴⁸

Not every Jewish convert, however, remained steadfast in his new faith. In 1615, a baptized Jew reconverted to Judaism, preferring to die "als ein Jud" (as a Jew). Upon reconversion, the council issued him a new verdict, which now included "Abfall vom Christenglauben und Gotteslästerung" (heresy and blasphemy), in addition to his previous serious theft sentence. As a result, he was hung by the feet.⁴⁹

Hanging by the feet necessitated the construction of specially designed *Schnappgalgen*. As was customary with regular gallows, all of Frankfurt's carpenters collaborated to build such *Schnappgalgen*. But what makes the construction of *Schnappgalgen* unique was their predominant usage in Jewish executions. Frankfurt did not appear to spare extra expense or additional labor to subject Jews to particularly harsh punishments.

The proselytizing routine, and its concomitant punitive repercussions, lasted throughout the entire 134-year span under investigation, with mixed results. The majority of the Jewish

47 RP, Oct. 6, 1597, 40; Gerald Bonner, *St. Augustine of Hippo—Life and Controversies* (London, 1963), 228–233, 295, 302–311; Peter Brown, *Augustine of Hippo: A Biography* (Los Angeles, 1969), 235–243.

48 RP, Oct. 6, 1597, 43; BB, Aug. 29, 1598, 190; BB, April 18, 1588, 226.

49 BB, April 14, 1615, 284.

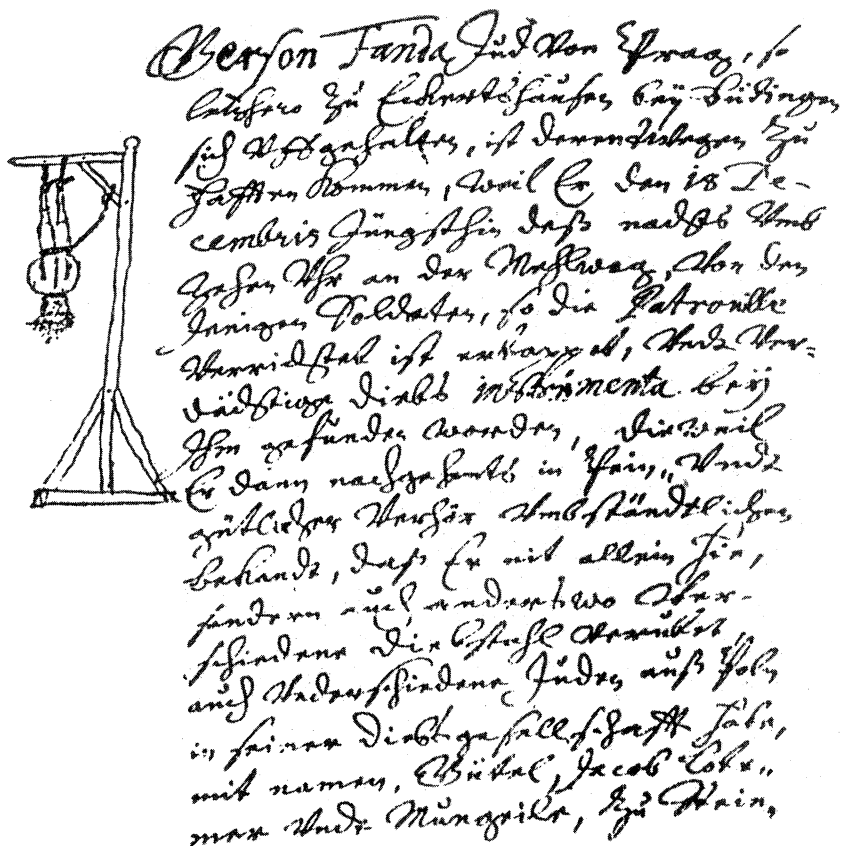
criminals (seven of the eleven) died with their faith intact, thus suffering a more painful death. Frankfurt's reaction to Jewish religious steadfastness was frustration. Whenever the city failed to convert a Jew, epithets in the *Strafenbuch* described him as dying a "verstockter Jud" (a stubborn Jew), an echo of Luther's emotional reaction to such failed efforts. Death, however, was not the end. The distinctiveness of capital punishment for Jews continued to designate offenders as Jewish even after death. A corpse hanging by its feet was a clear sign conveying to passersby the bad nature of Jews. Lutherans, similar to their Catholic predecessors, visibly perpetuated this evil image.⁵⁰

Visible negative symbolism was conveyed to onlookers even during executions. In 1572, the corpse of a notorious Jewish criminal who died prior to being executed was hung on the gallows. Although such symbolic executions were also performed for Christian criminals if they died before the authorities could punish them, this case deviates from the norm. The corpse on its way to the gallows was flanked with the sign, "ain Judenbildnis" (portrait of a Jew). An inscription in capital letters described him as "Joseph Jud und falscher Briefmacher," Joseph, Jew, and forger. Although Joseph had been a serious offender, this was the only instance when a criminal's religion was announced in big letters, together with what contemporaries seemed to consider a portrait of his religious identity. By listing his religion prior to citing his crime, the authorities accentuated not only the importance of postmortem Jewish identifications for them but also the negative implications of being Jewish. Frankfurt's Jewish criminals were even marked for posterity. Various drawings in the *Strafenbuch*, clearly distinguish Jewish from Christian penalties. In one case, Hebrew letters were inserted above the penal illustration (see figures 2 and 3).

Corporal punishments add their own dimension to this anti-Jewish sentiment. The only criminal who ever had his ears cut off in Frankfurt from 1562 to 1696 was a Jew. Moreover, one excessively harsh, corporal punishment, branding, was almost exclusively applied to Jews. Though discontinued after 1586, branding was reintroduced in 1664. Of the seven prisoners subjected

⁵⁰ ST, Nov. 29, 1627, March 18, 1661, Oct. 19, 1694, Oct. 18, 1695; Boes "Public," 270–271.

Fig. 2 Penal Illustration 1

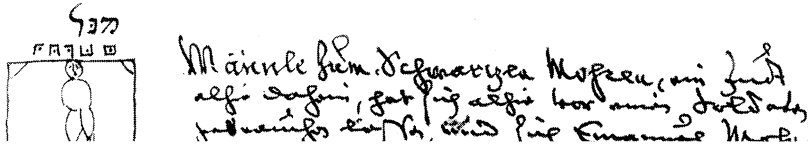


SOURCE Strafenbuch, April 8, 1635.

to this procedure, six were Jews. The non-Jewish culprit was branded on his back; all six Jews were branded on their faces, either their foreheads or their cheeks. The time frame of branding's revival coincides with the increased conviction rate of Jews, particularly with the Verdachtsstrafe. This conjunction reinforces the argument that from 1661 to 1696, Jews were subjected to overzealous legal prosecutions.⁵¹

⁵¹ ST, Oct. 15, 1567, Nov. 19, 1664, Sept. 9, 1676, May 4, 1681, Oct. 13, 1686, Feb. 2, 1687.

Fig. 3 Penal Illustration 2



SOURCE *Strafenbuch*, March 8, 1661.

Although only one of Frankfurt's laws was explicitly Jewish-oriented, loopholes in others lent themselves to disparity by exempting people of high social status and money from criminal punishments for certain crimes. Municipal monetary enticements to arrest transgressors also singled out Jewish suspects. Inquisitorial court procedures added their own dimension to procedural biases. Under the veneer of legality, Frankfurt extended prison stays for Jews prior to granting trial, abrogated traditional exculpatory provisions, prolonged the system of judicial torture for Jewish suspects, and disproportionately sentenced Jews, especially to the Verdachtsstrafe, during the last four decades of the seventeenth century.

Capital and corporal punishment of Jews furnish the most distinct evidence of deliberate bias. Throughout the entire 134-year span of this study, Jews were subjected to deliberately harsher punishments than their Christian counterparts. Although by the early seventeenth century, Frankfurt and many parts of Europe opted for milder capital punishments, such moderating tendencies did not affect Frankfurt's Jewish criminals.⁵²

These findings clearly contradict assertions by some historians that the early modern European penal system centered on crimes and that punishments were commensurate with offenses. As this case study demonstrates, bias had as much, if not more, impact on the contemporary penal structure than the exigencies of justice, at least insofar as Jews were concerned. A revision of early modern penal interpretations seems to be in order.

⁵² Richard van Dülmen, *Theater des Schreckens. Gerichtspraxis und Strafrituale in der frühen Neuzeit* (Munich, 1985), 112, 182.

Furthermore, by the 1660s, Frankfurt's city council and the population at large resorted to a legal persecution of Jews that not only continued long-established anti-Jewish sentiment but also pointed to a general cultural transformation. Public anti-Jewish outbursts, such as the 1614 Fettmilch uprising, were replaced by more "refined" judicial attacks. The court system served as a veiled discriminatory weapon.⁵³

Whether Frankfurt's example constitutes a regional aberration is beyond the scope of this article. However, the labeling of Jewish convicts, even those who converted, was clearly not a local prerogative. Witness the Spanish Inquisition and the highly discriminative Spanish *Limpieza de Sangre* Code. But even though the Spanish treatment of Jews has gained much attention, few, if any, studies have concentrated on the Protestants' treatment of Jews in the courts. As this study shows, it, too, was fraught with bias.

53 Ulbricht, "Criminality," 69; van Dülmen, *Theater*, 111; Michel Foucault (trans. Alan Sheridan), *Discipline and Punish: The Birth of the Prison* (New York, 1979).